

ENROLLED, An Act,

To further provide for the State of Alabama Board of Heating, Air Conditioning, and Refrigeration Contractors by amending Sections 34-31-18, 34-31-19, 34-31-20, as amended by Act 2008-130, 2008 Regular Session (Acts 2008, p. 187), 34-31-24, 34-31-25, 34-31-26, 34-31-28, 34-31-29, 34-31-30, 34-31-32, and 34-31-35 of the Code of Alabama 1975, to provide for the regulation of refrigeration contractors; to require contractors to display their certification number; to prohibit another person's use of a license; to provide for an apprentice registration and board fees; to require yearly continuing education programs; to provide certain certification examination requirements and exemptions; to require performance bonds; and to allow for board fines.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 34-31-18, 34-31-19, 34-31-20, as amended by Act 2008-130, 2008 Regular Session (Acts 2008, p. 187), 34-31-24, 34-31-25, 34-31-26, 34-31-28, 34-31-29, 34-31-30, 34-31-32, and 34-31-35 of the Code of Alabama 1975, are amended to read as follows:

"§34-31-18.

"For the purposes of this chapter, the following terms shall have the meanings herein ascribed to them unless the context clearly indicates otherwise:

"(1) ADMINISTRATIVE PROCEDURES LAW. Sections 41-22-1 through 41-22-27, and any subsequent amendment or supplement thereto, and any rules or regulations promulgated thereto.

"(2) APPRENTICE. A person other than a certified heating, air conditioning, or refrigeration contractor, who is engaged in learning and assisting in the installation, service or repair of a heating, air conditioning, or refrigeration system and working under the direct supervision of a certified heating, air conditioning, or refrigeration contractor, and who has successfully fulfilled the voluntary registration requirements of the board and has been duly registered by the board as such for the current year.

"(3) BOARD. The State Board of Heating, Air Conditioning, and Refrigeration Contractors, herein established.

"(4) CERTIFICATION. The process of testing to determine the knowledge and skill of an individual with respect to heating, air conditioning, and refrigeration. This term is used herein interchangeably with the term "license."

"(5) CERTIFIED HEATING AND AIR CONDITIONING CONTRACTOR. Any individual or any regularly employed person for any partnership or corporation who for hire is engaged in the installation or service and repair of heating and air conditioning systems."(6) CERTIFIED REFRIGERATION CONTRACTOR. Any and all legal entities engaged in the business of refrigeration contracting and servicing, installation, and repair.

"(7) HEATING AND AIR CONDITIONING SYSTEMS OR SYSTEM. A heating and/or cooling apparatus consisting of an air heating and/or cooling fixture from pipes, plenums or blowers including any accessory and equipment installed in connection

herewith; specifically excluding window units, automotive or farm implement type heating and/or air conditioning equipment.

"(8) INSTALLATION. The act of setting up or installing a heating and air conditioning system or refrigeration system for operation and use.

"(9) REFRIGERATION. The use of mechanical or absorption equipment to control temperature, humidity, or both, in order to satisfy the intended use of a specific space, other than for human comfort.

"(10) REFRIGERATION TRADE OR BUSINESS. Includes any and all legal entities engaged in the installation, maintenance, servicing, and repairing of refrigerating machinery, equipment, devices, and components.

"(11) REGULARLY EMPLOYED PERSON. A person who is an actual employee of the business, not an independent contractor. The person must work on an average of 30 or more hours per week for the heating, air conditioning, or refrigeration business. A regularly employed person must not be paid as an independent contractor and must receive a W-2 for all earnings.

"(12) RESPONSIBLE CHARGE. The direction of projects involving the installation or service and repair of heating, air conditioning, and refrigeration systems requiring initiation, professional skills, technical knowledge and independent judgment.

"(13) SERVICE AND REPAIR. The act of maintaining for operation a heating, air conditioning, or refrigeration system

which has previously been installed including parts replacement within a piece of equipment.

"§34-31-19.

"The purpose of this chapter is to certify qualified contractors on a state-wide basis in order to protect the public by identifying those contractors who have the knowledge and ability to install or service and repair heating, air conditioning, and refrigeration systems.

"§34-31-20.

"(a) The Board of Heating and Air Conditioning Contractors as created by Act 82-547, 1982 Regular Session (Acts 1982, p. 900), is renamed the Board of Heating, Air Conditioning, and Refrigeration Contractors. The authority of the board is expanded to allow the board to examine, certify, and regulate heating, air conditioning, and refrigeration on a statewide basis.

"(b) The board shall consist of 12 members, who shall be citizens of this state and who shall be subject to confirmation by the Senate. The seven initial appointments shall be effective as of July 1, 1982, as follows: One member shall be appointed by the Governor for an initial term of one year, and shall be a licensed professional engineer; one member shall be appointed by the Governor for an initial term of four years and shall be a heating and air conditioning contractor; one member shall be appointed by the Lieutenant Governor for an initial term of three years and shall be a trade representative of an equipment manufacturer or supplier; one member shall be appointed by the Governor for an initial

term of three years and shall be a consumer from the general public; one member shall be appointed by the Speaker of the House of Representatives for an initial term of two years and shall be a trade representative of the service, repair parts industry; one member shall be appointed by the Lieutenant Governor for an initial term of two years, and shall be a representative from county or local inspection services department; and one member shall be appointed by the Speaker of the House of Representatives for an initial term of three years, and shall be a consumer from the general public. Three additional members shall be appointed to serve four-year terms beginning on January 1, 2001. Each of these three additional members shall be heating and air conditioning contractors. One of these additional members shall be appointed by the Governor, one of these additional members shall be appointed by the Lieutenant Governor, and one of these additional members shall be appointed by the President Pro Tempore of the Senate. An additional two members, who shall be heating and air conditioning contractors, shall be appointed by the Speaker of the House of Representatives for initial terms of three years. Their successors, who shall be appointed by the same respective appointing authorities, and shall possess the same respective occupational qualifications, shall each serve not more than two consecutive terms of office of four years each and until their successors are appointed and qualified. The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.

"(c) All moneys, equipment, and property of the board created pursuant to Sections 34-31-1 through 34-31-17, inclusive, shall, effective July 1, 1982, be transferred to the board created in subsection (a). The board shall pay all money received under this chapter to the State Treasurer, who shall keep the money in a separate fund for the board. All money remaining at the end of the fiscal year which exceeds 25 percent of the board's budget for the previous year shall be transferred to the State General Fund.

"§34-31-24.

"(a) No individual, partnership, or corporation shall advertise, solicit, bid, obtain permit, do business, or perform the function of a certified contractor unless the person or persons in responsible charge, as defined in Section 34-31-18(7), are certified contractors.

"(b) Every contractor licensed under this chapter shall display the contractor's certification number and the company name on any and all documentation, forms of advertising, and on all service and installation vehicles used in conjunction with heating, air conditioning, and refrigeration contracting.

"(c) A contractor licensed under this chapter may not permit the use of his or her license by any other persons.

"(d) No official charged with the duty of issuing licenses to any individual, partnership or corporation to operate a business as a certified contractor shall issue such license unless there is presented for inspection a certificate of qualification as provided for herein issued by the board to

the individual or to some person in responsible charge with the partnership or corporation.

"§34-31-25.

"(a) For the purpose of defraying the expense in carrying out the provisions of this chapter, the board may fix fees to be paid by applicants for certificates, but in no event shall the charges fixed by said board exceed two hundred dollars (\$200). The inactive fees may be waived for building officials or inspectors, as defined by the International Code Council. All fees fixed by the board must accompany the application, and no part of said fees shall be refunded. Said fees shall be received by the board and held solely for the purpose of paying the expense of carrying out the provisions of this chapter.

"(b) Fees for apprentice registration and annual renewal fees shall not exceed fifty dollars (\$50).

"(c) All penalties collected by the board shall be used in the same manner and for the same purpose as fees.

"(d) Renewal fees shall be established by the board as to insure adequate funding to support the board. Fees shall not exceed two hundred dollars (\$200) per year. The amount of these fees shall be established by the board on an annual basis to provide adequate funding to support the board and to pay the expenses incurred for applications, examinations, and/or renewals of licenses.

"§34-31-26.

"(a) All certificates provided for herein shall be renewed annually, not later than 90 days after the first day

of October of each year. All holders of certificates may be renewed annually, provided that the certified contractor has complied with all provisions of law and rules and regulations of the board thereof, upon payment of a renewal fee set forth by the board as provided for in this chapter.

"(b) Any person certified by the board may elect an inactive status certificate by notifying the board in writing. The fee for the issuance and renewal of an inactive status certificate shall be established by the board in an amount not to exceed one-half of the amount set for fees pursuant to Section 34-31-25.

"(c) The board shall provide by rule or regulation those activities which an inactive status certificate holder may engage in, and for a procedure for the reinstatement as an active status certificate holder.

"(d) The board shall adopt an annual program of continuing education for its certified contractors by January 1 of each year. All certified contractors shall be required to complete four hours of continuing education every year. This minimum continuing education requirement will begin during the calendar year 2001. All certified contractors will be required to complete the minimum continuing education requirements prior to renewal in all years beginning January 1, 2002.

"(e) The failure to complete the minimum continuing education requirements shall prevent the renewal of the certified contractor's license until proof of compliance with the continuing education requirement is submitted to the board. The board may permit a certified contractor to submit a



deficiency plan to the board for approval by January 1 of each year for medical hardships and emergencies that prevent the certified contractor from complying with the continuing education requirements on time. This deficiency plan shall be specific in describing the plan for full compliance with the continuing education requirement and shall be accompanied by a deficiency plan fee established by the board.

"(f) The board shall adopt rules that prescribe the policies, procedures, and fees for obtaining board approval of the providers, courses, and instructors for the continuing education program.

"§34-31-28.

"(a) All prospective certified contractors in this state desiring to qualify in accordance with the provisions of this chapter shall be required to stand for a written examination before the board. Any applicant failing to pass his first examination for a certificate shall be entitled to take any subsequent examination, either written or, upon request of the applicant, practical examination which is equivalent to the written examination, to be held within six months from the date of his first or latest unsuccessful examination.

"(b) The board shall register every person who may apply for an apprentice heating, air conditioning, or refrigeration registration certificate upon forms provided by the board and upon payment of all prescribed fees.

"(c) The board shall examine the character, fitness, and the qualifications of every person who applies for a

certified heating, air conditioning, or refrigeration contractor license upon forms prescribed by the board and upon payment of all prescribed fees.

"(d) An applicant for examination for a heating, air conditioning, or refrigeration certified contractor license shall be eligible to stand for the examination if the applicant has held an apprentice registration, issued by this board, for two or more calendar years; or has completed 3,000 hours of coursework or experience, as defined by the board; or is a graduate of an approved heating, air conditioning, or refrigeration curriculum.

"(e) All legal entities engaged in the refrigeration business for a period of two years prior to the date of passage of the act adding this subsection, may apply to the board for a certified refrigeration contractor license without standing for a written examination. The applicant shall provide evidence of such experience to the board as promulgated in the rules of the board. An applicant who does not apply for such certification by December 31, 2011, must stand for the written examination.

"(f) Counties, municipalities, or other local entities are hereby prohibited from requiring any further local testing or other requirements of certified contractors, subject to the payment of any applicable local privilege, license, or business fees or charges.

"(g) Persons licensed by the Alabama Liquefied Petroleum Board are exempt from this chapter pertaining to heating, air conditioning, and refrigeration when:

"(1) Engaged in the installation, repair, or replacement of a liquefied petroleum gas appliance so long as the appliance is not connected to a refrigeration system, except that such persons may also engage in the replacement or repair of a liquefied petroleum gas central heating unit when it is combined with an air conditioning unit.

"(2) Engaged in the installation of a venting system required for a vented-type liquefied petroleum gas appliance.

"(h) This chapter does not apply to:

"(1) An authorized employee of the United States, the State of Alabama, or any municipality, county, or other political subdivision, if the employee does not hold himself or herself out for hire or otherwise engage in contracting except in accordance with his or her employment.

"(2) Any mobile home or manufactured structure that is installed, inspected, or regulated by the Alabama Manufactured Housing Commission; however, the repair, servicing of a heating and air conditioning system, or the installation of a new heating and air conditioning system in a previously inspected manufactured structure is subject to this chapter.

"(3) Persons performing work on motor vehicles, residential refrigerators, or ice machines.

"(4) Household appliances.

"(5) Farm equipment.

"(6) Poultry operations whether engaged in hatching, primary processing, or further processing of chicken, turkey, or other fowl.

"§34-31-29.

"(a) The board shall provide for examinations which test the knowledge, skill, and proficiency of the applicants.

"(b) Examinations shall be held at such time and place as may be fixed by the board at least once each three-month period. Written notice of the place of examinations shall be mailed to all persons who have filed current applications for the examinations of the board.

"(c) The board may charge each applicant and retesting applicants for examination a reasonable fee based on the actual costs for administering the examinations. Applicants must stand for the examination within one year from the date the board receives the examination application and fees, otherwise the applicant must resubmit an application and appropriate fees.

"(d) The board may enter into reciprocity agreements with other states to permit Alabama certified contractors to engage in work in other states in exchange for that state's contractors being permitted to perform work in Alabama. This provision recognizes the status of the certified contractor as having passed the examination; however, all certification fees are required to be paid.

"§34-31-30.

"The board may require a performance bond in the amount of fifteen thousand dollars (\$15,000) per year for all active certified contractors. There shall be no discrimination between contractors similarly situated, and each

classification of regulated contractors for bonding purposes must be reasonable in light of the purpose of the bond.

"§34-31-32.

"(a) Any person engaged in business as a certified contractor or performing the functions of a certified contractor in violation of this chapter shall be guilty of a Class A misdemeanor, as defined by the state criminal code.

"(b) The board may, at its discretion, impose late penalties on those certified contractors who fail to renew certificates by December 31 of each year. The board may also remove certification from any certified person who fails to renew his or her certificate by the first day of March and require the person to apply for a new certificate. Furthermore, the board may at its discretion, remove, revoke or suspend the certification from any certified contractor who provides substandard or dangerous service, repair, or installation, or who otherwise violates this chapter, and may require such person to apply for a new certification. The board may, in its discretion, also require the successful re-testing of any such person who applies for a new certification.

"(c) The board may reprimand, in writing, any certified contractor who provides substandard or dangerous service, repair, or installation, or who otherwise violates this chapter.

"(d) The board may levy and collect administrative fines for serious violations of this chapter or the rules and

regulations of the board of not more than two thousand dollars (\$2,000) for each violation.

"(e) In addition to or in lieu of the criminal penalties and administrative sanctions provided in this chapter, the board may issue an order to any person, firm, or corporation engaged in any activity, conduct, or practice constituting a violation of this chapter, directing the person, firm, or corporation to forthwith cease and desist from the activity, conduct, practice, or performance of any work then being done or about to be commenced. The order shall be issued in the name of the State of Alabama under the authority of the board. If the person, firm, or corporation to whom the board directs a cease and desist order does not cease or desist the proscribed activity, conduct, practice, or performance of work immediately, the board shall cause to issue in any court of competent jurisdiction and proper venue, a writ of injunction enjoining the person, firm, or corporation from engaging in any activity, conduct, practice, or performance of work prohibited by this chapter. Upon showing by the board that the person, firm, or corporation has engaged or is engaged in any activity, conduct, practice, or performance of work prohibited by this chapter, the courts shall issue a temporary restraining order restraining the person, firm, or corporation from engaging in such unlawful activity, conduct, practice, or performance of work pending the hearing on a preliminary injunction, and in due course a permanent injunction shall issue after the hearing, commanding the cessation of the unlawful activity, conduct, practice, or

performance of work complained of, all without the necessity of the board having to give bond. A temporary restraining order, preliminary injunction, or permanent injunction issued pursuant to this subsection shall not be subject to being released on bond. In the suit for an injunction, the board may demand of the defendant a fine of up to two thousand dollars (\$2,000) plus costs for each offense. Anyone violating this chapter who fails to cease work, after a hearing and notification from the board, shall not be eligible to apply for a certified contractor's license for a period not to exceed one year from the date of official notification to cease work. The board may withhold approval, for up to six months, of any application from anyone who prior to the application has been found in violation of this chapter.

"§34-31-35.

"The State Board of Heating, Air Conditioning, and Refrigeration Contractors shall be subject to the Alabama Sunset Law, Title 41, Chapter 20, as an enumerated agency as provided in Section 41-20-3, and shall have a termination date of October 1, 2004, and every four years thereafter, unless continued pursuant to the Alabama Sunset Law."

Section 2. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.